

UTAH AIR QUALITY BOARD MEETING
November 7, 2007

FINAL MINUTES

I. Call to Order

Ernie Wessman called the meeting to order at 12:33 p.m.

Board members present:

Nan Bunker, Jim Horrocks, Wayne Samuelson, Rick Sprott, Ernest Wessman, Kathy Van Dame, Darrell Smith, Craig Petersen, Steve Sands, Joel Elstein, and Stead Burwell (in attendance at approximately 1:10 p.m.)

Executive Secretary: Cheryl Heying

II. Date of the Next Air Quality Board Meetings

December 5, 2007 (cancelled) and January 9, 2008.

III. Approval of the Minutes for October 3, 2007 Board Meeting.

- Kathy Van Dame made the motion to approve the minutes of the October 3, 2007 Board meeting. Nan Bunker seconded. The Board approved unanimously.

IV. Motion of Amicus Curiae National Parks Conservation Association Seeking Leave to File Supplemental Brief Addressing IGCC Issues. Presented by Fred Nelson.

Fred Nelson, of the Utah Attorney General's Office and Counsel to the Board, stated that previously the National Parks Conservation Association asked to submit an amicus brief on the Sevier Power Company proceeding. They have used 10 pages and asked to reserve five pages to submit this additional brief. Mr. Nelson has not received any objections from the Board and recommends the Board approve the submittal of this brief.

- Darrell Smith made the motion to approve allowing the National Parks Conservation Association to file a supplemental brief. Nan Bunker seconded. The Board approves six in favor of the motion with recusals of Rick Sprott, Ernie Wessman, Kathy Van Dame, and Steve Sands.

V. Consideration of Five Year Renewal for: R305-2 Electronic Meeting Rule and R305-3 Emergency Meeting Rule. Presented by Laura Lockhart.

Laura Lockhart, of the Utah Attorney General's Office, stated that in 2002 each of the Department of Environmental Quality Boards adopted two rules, one governing emergency meetings and one governing electronic meetings.

The Electronic Meeting Rule allows for Board members, members of the public, or someone in an adjudication to participate by telephone. Further, unless this rule is reauthorized by the Board, it

sunsets. Ms. Lockhart requests a motion from the Board to reauthorize the Electronic Meeting Rule with an update changing the statutory citation from 52-4-7.8 to 52-4-207.

- Kathy Van Dame moves to adopt and renew the Electronic Meeting Rule as described by Ms. Lockhart. Steve Sands seconded. The Board approved unanimously.

Mr. Wessman asked counsel when prior meetings of the Board had turned into an electronic meeting is there anything that the Board needs to do to ensure that the Board was in compliance with these rules. To which Mr. Nelson stated that all that is needed is a 24-hour notice and that to his knowledge appropriate steps were taken on the past meetings in question. In addition, Ms. Lockhart stated that there is a generic provision that states that any meeting may turn into an electronic meeting.

Ms. Lockhart continued by stating the Emergency Meeting Rule is not required by any statute, but was promulgated at the request of the Attorney General's Office. By using the five year reauthorization process it was determined that this rule was not appropriate because this rule establishes requirements that are above and beyond the requirements already established by statute for emergency meetings. In an emergency it is not a good idea to impose additional requirements on a Board that might prevent them from taking an important action, which is essentially what this rule does. Ms. Lockhart requests a motion that the Board elect to allow this rule to sunset at this five year reconsideration period.

There were some questions from Board members in the difference of allowing this rule to sunset or to revoke it. By revoking this rule it would be required to go through a notice and comment period. By allowing this rule to sunset it would be during the time the Legislature lists the rules that would sunset in their administrative rules during the next general session. Ms. Lockhart stated that it is the Attorney General's Office request to allow this rule to sunset.

- Rick Sprott moved that the Board allow the Emergency Meeting Rule to sunset. Nan Bunker seconded. The Board approved unanimously.

VI. Propose for Public Comment: Amend R307-101. General Requirements; R307-115. General Conformity; R307-170-7. Performance Specification Audits; R307-221. Emission Standards: Emission Controls for Existing Municipal Solid Waste Landfills; R307-222. Emission Standards: Existing Incinerators for Hospital, Medical, Infectious Waste; R307-223. Emission Standards: Existing Small Municipal Waste Combustion Units; R307-224. Mercury Emission Standards: Coal-Fired Electric Generating Units; R307-310. Salt Lake County: Trading of Emission Budgets for Transportation Conformity; R307-417. Permits: Acid Rain Sources; R307-801. Asbestos; and R307-840. Lead-Based Paint Accreditation, Certification and Work Practice Standards. Delete R307-215 Emission Standards: Acid Rain Requirements. Presented by Mat Carlile.

Mat Carlile, Environmental Planning Consultant at DAQ, stated that the incorporation by reference is a legal tool that allows an agency to adopt a rule that has been adopted by another agency and make it enforceable. DAQ has incorporated several portions of Title 40 of the Code of Federal Regulations (CFR) throughout R307. One of the legal requirements to incorporate materials by reference is to specify the date, issue, or version of the material being incorporated. Due to the time consuming process to revise each rule, the date of the version of 40 CFR reference in several rules has not been updated for many years. DAQ is proposing at this time to streamline the process of updating the date of the version of 40 CFR and incorporate it throughout R307 where applicable. Staff recommends that the rules that are identified in this agenda item be proposed for public comment.

Mr. Sands asked for an explanation of the note at the bottom on the date of enactment or last substantive change and that some of the 2008 dates were changed and some were not. To which Mr. Carlile

responded that the 2008 date just acts as a placeholder when they go into effect sometime in 2008 because the exact date is not known as yet. Mr. Sands asked that if all these rules get modified as proposed, to change those references to the 40 CFR, that they would all have the substantive change date in 2008. To which Mr. Carlile agreed and stated that those are the default dates that the Department of Administrative Rules enters.

Mr. Wessman inquired how it is determined that these rules get the proper review, scrutiny and understanding of the changes so that people are not inadvertently in violation or an inappropriate situation arise. Mr. Carlile stated that there were several rules of concern in adopting the most current version of the CFR and DAQ decided not to go ahead with those until it was determined how they would work out in the future. When this was coordinated, staff members who are experts in particular areas were asked to give a summary of the changes since the last CFR was incorporated. These summaries would then be taken into consideration through the public comment period.

Mr. Wessman asked if it's correct that the intent is that each successive years to advise people on what is going on. To which Mr. Carlile agreed and stated that if there is an automatic updating or an enforcement proceeding that was initiated under a prior version before the yearly update, then the rules are fairly clear about the rules that were in effect or the rules that pertain.

There some additional questions brought up from the Board regarding changes to the 40 CFR and the attached summary table and would the Board be notified of these proposed changes. Mr. Carlile stated that it is DAQ's intention to bring these before the Board for approval. It may not be exactly each January, because the CFR goes into effect July 1st of each year, but it would be brought before the Board prior to that date. If DAQ was uncomfortable with incorporating a specific section of the CFR, then DAQ would specify an older version date in the specific rule that incorporates that section into the Air Quality rules.

- Ernie Wessman made the motion to propose for public comment the sections as indicated in the agenda dated November 7, 2007, involving the incorporation by reference to CFR paragraphs. Rick Sprott seconded. The Board approved unanimously.

VII. Propose for Public Comment: Amend R307-401-14. Used Oil Fuel Burned for Energy Recovery. Presented by Mat Carlile.

Mr. Carlile stated that while reviewing R307 for references to the CFR it was noticed that the definition of boiler in R307-401-14 was not consistent with the Division of Solid and Hazardous Waste (DSHW) rules. Therefore, DAQ is asking the Board to reference the DSHW definition of boiler used in R315-11B rather than referencing 40 CFR to ensure the DAQ rules are consistent with the DSHW rules.

Ms. Van Dame inquired that if the DSHW rennumbers their rules how will it be changed in the DAQ rules. To which Mr. Carlile responded that DSHW has been asked to notify DAQ of any revisions. In addition, the rules with the CFR references will be put on a list and reviewed once a year.

Mr. Wessman asked if units that have been in operation burning some used oil will now be excluded that were previously okay, by changing the definition of boiler. Mr. Carlile responded that it was DAQ's intention to match the DSHW rules and so DSHW would have captured those units in question. Ms. Heying added that there were no inconsistencies found and that this will allow DAQ rules to be consistent with DSHW rules on the definition of boiler.

- Kathy Van Dame moved to propose for public comment R307-401-14 Used Oil. Steve Sands seconded. The Board approved unanimously.

Mr. Carlile then gave the Board an update on the PM10 Maintenance Plans. The plans have been submitted to EPA and DAQ is now waiting to for their decision.

Ms. Heying stated that there are some concerns currently being discussed with EPA. One of which is developing a time table on approval or disapproval. The DAQ has looked at basically bifurcating the PM10 State Implementation Plan (SIP) into the different areas between Ogden City, Utah County, and Salt Lake County. Staff is also working on the SO2 implementation plan which was submitted prior to the PM10 SIP date. The Clean Air Act itself stipulates that the EPA has 18 months to act but until they are forced to act, they really don't act. In the process of doing the PM10 implementation plan and SO2 plan, the models and inventories have changed. So a consensus between DAQ and EPA needs to be reached in how best to deal with these issues, which is part of the process of reaching an agreement in terms of a schedule.

VIII. Final Adoption: Amend R307-415-4. Applicability. Presented by Tim Andrus.

Tim Andrus, Environmental Engineer at DAQ, stated that on August 1, 2007, DAQ proposed R307-415-4 for public comment. The Board proposed to update this rule to implement changes in federal policies and remove an outdated cross reference. A public hearing was held on September 19, 2007. No one came to the meeting and no oral or written comments were received. Staff recommends that R307-415-4 be adopted as proposed.

- Nan Bunker moved for final adoption, amend R307-415-4 Applicability. Kathy Van Dame seconded. The Board approved unanimously.

IX. Informational Items.

A. PM2.5 Area Designations – State's Recommendation to EPA. Presented by Bill Reiss.

Bill Reiss, Environmental Scientist at DAQ, stated that a new PM2.5 standard was promulgated about a year ago. It's an option for DAQ to make recommendations to EPA as to what DAQ feels are the appropriate boundaries for any PM2.5 nonattainment areas and the deadline for this is December 2007. DAQ has three choices: to designate areas as attainment, nonattainment, or unclassifiable. Mr. Reiss then followed with a PowerPoint presentation to the Board explaining the State's PM2.5 area designation recommendations with comments and questions from Board members.

After the presentation, Mr. Reiss explained how the administrative process will work with EPA. The standards were promulgated a year ago and then one year later, December 2007, DAQ makes recommendations to EPA. The EPA then has about a year to make this final in the Federal Register. Once EPA has finalized it, this begins all subsequent clocks and from that point it will be one year until transportation conformity becomes effective; three years until DAQ must produce a SIP; and then two years after that for an attainment date. It is expected that there will be negotiations back and forth between the two agencies before this is finalized.

Mr. Reiss concluded that this agenda item presents to the Board recommendations that will be submitted to EPA by DAQ on the PM2.5 designations. The Board has asked that the final version of the recommendations be reported back to them.

B. 40 CFR 309 Regional Haze SIP Update. Presented by Jim Schubach and Colleen Delaney.

Jim Schubach, Environmental Engineer at DAQ, stated that the DAQ is currently in the process of revising the 2003 309 Regional Haze SIP. The Air Quality Board adopted this SIP at the end of 2003 as required by the EPA 1999 Regional Haze Rule. However, because of a number of lawsuits challenging EPA's original Regional Haze Rule, certain sections of the SIP are now required to be reviewed and updated. The EPA revised and finalized in October 2006 their Regional Haze Rule and that rule requires that DAQ's update be completed by December 2007. Utah's existing 2003 Regional Haze SIP is currently in effect and is working and functioning, but our requirements are to update certain sections. However, the Utah 2003 SIP with planned revisions has not yet been approved by EPA Region 8. Mr. Schubach then followed with examples of changes to some of the sections and stated that the existing 2003 SIP is functioning as it was designed and in proceeding forward there should be increased reductions due to the regional haze effort. However, given the late release of the Regional Haze Rule, EPA is aware that western states may not meet the December deadline. The DAQ is anticipating to have a SIP draft presented to the Air Quality Board by January/February of 2008 and plans to submit to EPA a revised SIP by May/June of 2008.

In answer to being asked about how it is going from when the first SIP was proposed in 2003 until now Mr. Schubach stated that there have been significant changes between 1990 and 2006 of which we are well below the regional glide path and progress is being made even as we try to get the rules worked out. In addition, on figure one of the attachment shows that actual emissions were below the original 2003 milestones and also below the recommendations from the Grand Canyon Commission.

It was asked if there is coordination between the SIP and the permitting process when sources come in with new projects that have large SO_x emissions. Colleen Delaney, Environmental Scientist at DAQ, answered that one of the advantages of the SIP developed for regional haze is that in addition to reducing emissions from existing sources the SO₂ milestones establish an SO₂ cap for existing and new point sources in the four state region. All new SO₂ sources, including power plants, etc., would need to be underneath the cap that has been established. So while it's not directly accounted for in the permitting process, the overall effect is that SO₂ emissions as a whole will reduce 50% from 1990 and will be capped at that level.

Ms. Delaney continued that this has been designed as a backstop trading program so it is a little different than what is seen in other parts of the country. The idea is that a cap is established and could provide some certainty to sources about what is needed in a region. As long as the annual inventory check stays below the milestone, everything is fine. If it does not stay below the milestone, it triggers a backstop regulatory trading program which would then go into effect. Sources would be given allowances for SO₂ emissions and have to show compliance. What DAQ has seen is that the cap has been providing an incentive to bring emissions down early. Ms. Heying added that as part of DAQ's implementation plan, the milestone report is submitted to the Board each year.

C. Compliance. Presented by Jay Morris and Harold Burge.

D. Air Toxics. Presented by Robert Ford.

E. Monitoring. Presented by Bob Dalley.

Bob Dalley updated the Board on air monitoring.

X. Closing Statements of Sevier Power Hearing. Presented by Fred Nelson.

Mr. Wessman stated that as a result of a conflict of interest or other reasons he and other Board members will now recuse themselves from Items X and XI on today's agenda. The recused Board members are: Ms. Heying, Mr. Sands, Mr. Sprott, and Ms. Van Dame. Mr. Horrocks has recused himself on item #7 only, but will be participating on all other issues.

Given those recusals, a quorum of the Board will be present to hear Items X and XI. Mr. Wessman then stated that Mr. Horrocks will be the presiding chair when the meeting reconvenes after a break.

- See transcript.

XI. Board Deliberation of Sevier Power Hearing. Presented by Fred Nelson.

- Stead Burwell motions to include Kathy Van Dame's voice in discussion, but still be recused in voting. Kathy Van Dame seconded. The motion fails with three in favor and four opposed.

Issue #7 Utah Division of Air Quality failed to require sufficient analysis of the impacts of the Sevier Power Company facility on visibility, soils and vegetation.

- Craig Peterson motions to uphold the Executive Secretary's action. Nan Bunker seconded. The motion carries with five in favor, one opposed, and one recusal.

Issue #3 Utah Division of Air Quality failed to provide adequate justification for not requiring Sevier Power Company to meet the most stringent NOx BACT limits proposed or required for other CFB boilers.

- Craig Petersen motions to uphold the Executive Secretary's position in issue #3. Nan Bunker seconded. The motion carries with six in favor and one opposed.

Issue #4 Utah Division of Air Quality failed to consider sufficiently activated carbon injection for control of mercury emissions from Sevier Power Company plant in its MACT determination.

- Wayne Samuelson motions to uphold the Executive Secretary's decision on issue #4. Joel Elstein seconded. The motion carries with six in favor and one opposed.

Issue #8 Utah Division of Air Quality illegally exempted the proposed facility from a cumulative Class I increment analysis.

- Darrell Smith motions to uphold the Executive Secretary's position on issue #8. Nan Bunker seconded. The motion carries with six in favor and one opposed.

Issue #9 the proposed facility will contribute to Class I SO2 increment violations at Capital Reef National Park.

- Joel Elstein motions to uphold the Executive Secretary's position on issue #9. Wayne Samuelson seconded. The motion carries with six in favor and one opposed.

Meeting was adjourned at 4:50 p.m.